

WISHA REGIONAL DIRECTIVE

Department of Labor and Industries

Division of Occupational Safety and Health

2.45 References to Policy Memos As Part of Inspection Documentation

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I. Background

Washington employers are subject to the requirements of Title 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA). RCW 49.17.060(2) requires employers to "comply with the rules, regulations, and orders promulgated under this chapter." The "rules" and "regulations" referenced by the statute are found in several chapters of administrative code, the most frequently cited being Chapter 296-24 WAC (General Safety and Health Standards), Chapter 296-62 WAC (General Occupational Health Standards), Chapter 296-155 WAC (Construction Work), Chapter 296-800 WAC (Safety & Health Core Rules), and other rules of the 800-series.

II. Scope and Application

This WRD provides guidance to DOSH compliance and consultation staff in the appropriate use of such policies. It replaces and rescinds WISHA Interim Operations Memorandum #97-2-A, issued February 28, 1997.

III. Interpretive Guidance

The Department of Labor and Industries (L&I) periodically finds it necessary to provide policy guidance to those staff responsible for enforcing or otherwise applying WISHA. Such guidance can be found in the various DOSH Operations Manuals, WISHA Regional Directives, and WISHA Interim Memoranda. Although most such guidance relates to L&I operations, many policies also provide interpretive guidance to assist staff in understanding the department's interpretation of a standard and in applying that interpretation in a consistent manner. On occasion, the purpose of such memos has been misunderstood and they have been described as "rules" with which employers must comply.

However, department policies cannot substitute for formally adopted standards, and they in no way create obligations for individuals outside the department.

Although such interpretive policies, like all department policies, are public records and may readily be shared outside the department, any educational function they fulfill is secondary to their primary purpose: to provide guidance to staff responsible for enforcing and otherwise applying WISHA. Employers can and should be presumed to be aware of the requirements of the laws and administrative regulations.

However, they cannot be presumed to be aware of the department's interpretive documents, however widely those documents may have been distributed. In any case, the interpretive documents can create no new requirements for anyone other than L&I staff (although they may, for example, describe the inter-relationship of existing requirements).

IV. **Special Consultation and Compliance Protocols**

1. DOSH staff must provide copies of department policies to anyone who requests them (see L&I Administrative Policy 2.08 and the DOSH Compliance and Consultation Manuals for further guidance regarding the release of public records). DOSH staff may offer such documents to employers and other customers to assist them in understanding the requirements in question, but it should always be noted that the interpretive memo relies on existing administrative rule and does not create obligations beyond those found in the rule (or combination of rules).
2. DOSH staff must not cite a department policy to prove that an employer has a particular obligation under a standard. In documenting a violation regarding personal protective equipment, for example, it may be appropriate to use *language* from the appropriate interpretive memo. But it is not necessary to reference the document itself, and it is never appropriate to reference such a document as a "clear requirement" or to indicate that it "clearly states that. . . ."

The *requirements* are found in the administrative rules. The interpretive memo simply directs the DOSH inspector or consultant to the appropriate requirement and guides him or her in applying it to a particular situation or type of situation.

- a. For this reason, no reference to an interpretive memo should be made in the completion of violation worksheets or similar documents. The rare exceptions to this would be such things as documenting the rationale for less stringent enforcement (typically by referencing a memo stating that a particular violation would be cited general on an interim basis, for example) or proving employer knowledge of the hazard (in such cases it would be necessary to prove that the employer had actually received a copy of the memo in question).

- b. DOSH staff may choose to include a copy of relevant interpretive memos in the inspection file, particularly if the employer has raised questions about whether the inspector or consultant has interpreted the standard correctly. The inspector or consultant, while not using the document to prove that the violation is valid, can in this manner at least document that his or her interpretation is in fact the interpretation used by the department as a whole.

Approved: _____
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